IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 672 of 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE C.K.BUCH

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?	
5	Whether it is to be circulated to the civil judge ?	

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RAMESHKUMAR PARSHOTTAMBHAI SAGAR - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR KB ANANDJIWALA for Appellant(s): 1,
MS DARSHANA S. PANDIT, LD.APP for Respondent (s) : 1,

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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

Date : 01/02/2007

ORAL JUDGMENT

1. The appellant is the orig.convict (hereinafter referred to as 'the appellant') of Special Case No.2 of 1987 decided by the learned Special Judge, Sabarkantha at Himatnagar, vide his judgment and order of conviction and

sentence dated 10th August, 1990, whereby the appellant has been held guilty for the charge of offence punishable under Section 161 of the Indian Penal Code and also under Sections 5(1)(d) punishable under Section 5(2) of the Prevention of Corruption Act, 1947 (hereinafter referred to as 'the Act').

2. The present appeal is under Section 374 of the Code of Criminal Procedure, 1973, filed by the appellant assailing the legality and validity of the judgment and order of conviction and sentence on various grounds. By way of the judgment and order of conviction and sentence under challenge in this appeal, the appellant is sentenced to undergo rigorous imprisonment for two years and to pay the fine of Rs.1500/- and in default to make payment of fine, rigorous imprisonment for 6 months qua the offence punishable under Section 161 of the Indian Penal Code; and the appellant is also directed to undergo rigorous imprisonment for 6 months and to pay the fine of Rs.1500/-, and in default to make payment of fine to undergo rigorous imprisonment for 6 months qua the

offence punishable under Section 5(2) of the Act. Of course, both the sentences are ordered to run concurrently.

3. Shri Anandjiwala, learned counsel appearing for the appellant, has taken this Court through the charge Ex.12 on page 28 of the paper-book. The statement of the appellant was recorded under Section 313 of the Code of Criminal Procedure, 1973 and written explanation was also given vide Ex.82, whereby he has denied the charge saying that he has been victimised by the complainant and other members of the raiding party including panch Dr.Prataprai L. Anakhia, PW-2, Ex.27, as well as PW-3 Yusufbhai N. Malek examined vide Ex.30. He has neither demanded nor accepted the amount of bribe amount of Rs.5000/- as alleged, from the complainant on the date of trap i.e. 02nd September, 1984 and only with a view to see that the appellant is trapped, the complainant as well as PW-3 Yusufbhai planted the bribe amount in the teapoy (corner table) lying in his drawing room, when the appellant had gone to instruct his maidservant to

collect the cup and saucer which were lying in the drawing room and was not able to see the activities of these two persons of planting the said amount in the teapoy.

4. To appreciate the say of the appellant as well as the case of the prosecution, firstly it would be appropriate to have a look on the basic charge framed against the appellant, which inter alia reads as under :

A. That on 02nd day of September 1984 at Himatnagar, District Sabarkantha, you were serving as Deputy Collector (L.N.D.11) Sabarkantha District at Himatnagar, and as such being a public servant demanded and accepted respondent.5000/- as bribe from the complainant Punjabhai Dahyabhai Patel son of Dahyabhai Rangabhai Patel of village Jalodar Taluka Modasa, through Yusufbhai Mohmamadbhai Malek of village Jalodar, Taluka Modasa, a gratification other than legal remuneration as a motive or reward for the issuance of an

order in favour of Dahyabhai Rangabhai Patel etc. in Revision Case No.190/84 under the Gujarat Agricultural Land Ceiling Act and thereby committed an offence punishable under Section 161 of the Indian Penal Code.

B. That on the aforesaid day, time and place you Rameshkumar Purshottambhai Sagar being a public servant by use of corrupt or illegal means or by abusing your position as as public servant obtained a sum of Rs.5000/- for yourself for pecuniary advantage and thereby committed an offence under Section 5(1)(d) of the Prevention of Corruption Act punishable under Section 5(2) of the said Act.

5. The above charge is framed on the facts placed by the prosecution before the learned trial Court and if the said facts, especially paragraph nos.2, 3 and 4, are reproduced, the say of the prosecution is as under :

“2. The prosecution's case stated in brief is that on 1.9.1984 at about 4.0 p.m. the complainant Punjabhai Dahyabhai Patel, resident of Jalodar, Taluka Modasa, District Sabarkantha went to the office of the Inspector of Anti Corruption Bureau, Shahibaug, Ahmedabad and narrated a story amounting to an offence which was reduced into writing at about 4.30 p.m. wherein the complainant alleged that he was professionally an agriculturist and is having agricultural land in the sim of Jalodar village admeasuing 83 acres and 30 Gs. There had been a case before the Mamlatdar and Krushi Panch, Modasa being case No.194/78 u/Ss. 20 and 21 of the Agricultural Lands Ceiling Act, 1960. The case was decided and the judgment was pronounced by the Mamlatdar & Krushi Panch, Modasa on date 24.2.78 in favour of the complainant. The case was once again re-examined and again decided in favour of the complainant on 2.1.84.

3. The accused Mr.R.P. Sagar being in the employment of the State of Government in the Revenue Department, he was posted as a Deputy Collector at Himatnagar and was placed in charge of Modasa Division for examining the land ceiling cases. The land ceiling case which was already decided by the Mamlatdar and Krushi Panch being case No.194/78 was sought to be revised by the present accused and the case was registered as Revision Case No.190/84 U/S.37(c) of the Agricultural Land Ceiling Act, 1960. For the purpose of revising the case, notices were issued against the complainant's father Dahyabhai Rangabhai Patel and complainant's uncle Shivabhai Rangabhai Patel and those notices were served on those farmers through post. The notices were requiring these farmers to appear before the Deputy Collector on 21.8.84 to show cause as to why the case must not be decided against them and the

land in access of ceiling should not be dealt with according to the law prevailing. On receiving these notices, the complainant went to seek advice of a person known to him and having a shop in Jalodar village and residing at Modasa. That person was one Yusufbhai Mohmadbhai Malek. The complainant showed the notices received by him and requested Shri Malek to accompany him to Modasa on the date fixed that is to say, on 21.8.84. Shri Malek agreed to accompany the complainant to the of the Deputy Collector, the accused, and accordingly on that date at about 12-0 (noon) both of them had gone to the Government Rest House in Room No.4 where the accused was camping as a Deputy Collector (L.N.D.11). On a call being made, the complainant Punjabhai and his companion Malek went inside the room and met the accused. The accused had initiated a talk with Yusufbhai and procured his identity. The complainant was asked to go out of the room. The

complainant Punjabhai following that instruction went out of the room. After about 10 minutes Yusufbhai came out of the room in which the accused was holding his sitting. Yusufbhai Malek informed the complainant that the accused had told him that the access land belonging to the complainant and his family was likely to be confiscated and if they wanted to avoid that confiscation, the complainants and the other owners of the land shall have to pay Rs.6,000/- to the Deputy Collector. The complainant told Yusufbhai Malek that he cannot take any decision independently but he shall have to consult his father and other sharers in the land. He also told Yusufbhai Malek that the demand made by the Deputy Collector/ accused was also very high and therefore, in order to reduce that amount and to make arrangement for the money, sometime may be sought for and Yusufbhai Malek was asked by the complainant to request the Deputy

Collector/ accused Mr.Sagar. Yusufbhai Malek and the complainant Punjabhai then went inside the room and Yusufbhai Malek requested Mr.Sagar to reduce the amount and to given an adjournment. Mr.Sagar the accused informed the complainant and Yusufbhai Malek that the amount cannot be reduced because he had to share that amount with his higher authorities and only then the work can be carried out. The accused Mr.Sagar further told the complainant and his companion Yusufbhai Malek to come with money on 28.8.84 at Modasa. In the meantime, another notice was received by the complainant and other sharers in the land informing them about the date fixed for the hearing of the Revision Case on 4.9.84. This notice was received by the complainant and others through post. As directed by the accused-Mr.Sagar, the complainant and Yusufbhai Malek once again went to Modasa Government Rest House and met the accused. Yusufbhai then told the

accused Shri Sagar that his companion namely; the complainant was in a position to pay Rs.3000/- only but Sagar was not agreeable to accept that amount. After some negotiation, Sagar ultimately told the complainant and his companion Yusufbhai Malek to give him Rs.5000/-. Yusufbhai then told the accused that as the case was adjourned to 4.9.84, they did not have money with them. The accused Mr.Sagar stated that he was to go to Bayad on the next-day and would return to Modasa in the evening and therefore, they may deliver the money after he returns to Modasa. Yusufbhai told Mr.Sagar that they were not in a position to collect any money and they would require at least four days time to which proposal Mr.Sagar agreed. The accused Mr.Sagar then told the complainant and Yusufbhai to go to his house on 2.9.84, the house being situated near D.S.P.'s bungalow and to pay him Rs.5000/- between 11-0 a.m. and 1-0 p.m. Yusufbhai then asked the

accused Mr.Sagar that the adjournment of the case was 4.9.84 and whether they would be required to come on that date at Modasa. To that querry, Sagar replied that he would finish up the case and they would not be required to come at Modasa. Thereafter, Yusufbhai Malek and the complainant had left the place. After they both left the place, the complainant told Yusufbhai Malek that the case was absolutely meritorious in their favour and Sagar was demanding a very big amount, was not proper. The complainant further told Yusufbhai that he was not desiring to pay any bribe to Mr.Sagar and he wanted to make a complaint and that Yusufbhai should accompany him.

4. Accordingly, on 1.9.84, the complainant and Yusufbhai had gone to the office of Anti Corruption Bureau, Shahibaug, Ahmedabad and produced before the Inspector on Duty (intimation of) the judgment given by

the Mamlatdar and Krushi Panch in his favour and also the notices received by them. As Yusufbhai was all throughout present, he was also kept present by the complainant with him in that office. The complainant also told the A.C.B. Inspector that as per the demand, he was required to go to pay the amount to Sagar at Himatnagar on the next day. The complainant also told the A.C.B. Inspector that he had no monetary transactions with Sagar and he did not wish to pay any amount by way of bribe. He had not to pay any amount officially to the accused by way of payment to the Government. On taking down this complaint, the complainant was made to sign that complaint after it was read over to him and after he admitted the contents."

After completing the said formalities, the ACB Police Inspector had arranged for the trap by calling the panchas and drawn the first part of panchnama and it is contended by

the prosecution that the raid had remained successful as the appellant had accepted the amount of bribe of Rs.5000/- on 02nd September, 1984.

6. Shri Anandjiwala has taken this Court through the deposition of complainant PW-1 Punjabhai Dahyabhai Patel Ex.25; PW-2 Panch Prataprai L. Anakhia Ex.27 and PW-3 Yusufbhai N. Malek Ex.30. He has also taken this Court through the relevant documents while making submissions on the oral evidence of these three witnesses including the panchnama Ex.28. Shri Anandjiwala while developing the arguments of concoction of the case against the appellant has taken this Court through the oral arguments of PW-4 Amrutlal Vithaldas Panchal in whose presence the specimen writing from the appellant was collected in the panchnama while collecting specimen writing from the appellant Ex.39. According to Shri Anandjiwala, the opinion of PW-5 Jagdish Jethalal Patel, who has been examined vide Ex.40, is not helpful at all to the prosecution and the learned trial Judge has

committed a grave error in appreciating the opinion evidence of the said Shri Jagdish Patel. Even there is a serious dispute as to the admitted/undisputed handwritings of the appellant Ex.35, and therefore, the finding arrived at by the learned trial Judge, keeping the opinion of the handwriting expert in mind, cannot sustain and thus, on this count also, the judgment and order of conviction and sentence should be held erroneous and bad. The PW-7 Narendrasinh Mulsinh Rathod, examined vide Ex.61 to prove the undisputed writing Ex.35 ought not to have been believed and in the same way, the learned trial Judge has committed gross error in accepting the evidence of PW-6 Rajusinh Kodarsinh Makwana, Deputy Mamlatdar, examined vide Ex.59. The prosecution witness nos.8, 9 and 10 are the trap witnesses and their evidence ought to have been scanned closely. The prosecution witness no.10 Shri Hiwale, Police Inspector, is an interested witness who investigated the crime and, therefore only, he has not even investigated objectively the allegation of the appellant that he has been victimised and

wrongly trapped by planting money in the teapoy. As neither Shri Hiwale was cooperating nor the trapping officer, the appellant was constrained to give his explanation through media which was published in a known Gujarati daily “Sandesh” on 05th September, 1984. The learned trial Judge ought to have consider this aspect, whereby the appellant has explained the contingency and has denied about acceptance of the bribe amount of Rs.5000/- from the complainant. The complainant was interested in favourable result in a sensitive case instituted under the Gujarat Agricultural Lands Ceiling Act (hereinafter referred to as 'the Ceiling Act') any how and therefore, he was out to secure favourable result by any means and, therefore only, he has filed a false complaint and trapped the appellant. The learned trial Judge has not considered the admission made in this regard by the complainant and the evidence of the prosecution ought to have been appreciated including the oral say of the PW-2 Dr.Anakhia in this background. When the family of the complainant was holding excess land than the

prescribed ceiling, Khatedar/holder of land reflected in village form nos.6 and 8-A were required to satisfy the authority independently by documentary evidence that they were joint holder and as they have major sons and entitled to hold land as if a separate unit and as the appellant was insisting on production of such document, he was trapped. It is true that the father of the complainant namely Dahyabhai Rangabhai, is one of the joint holder of the Khata, however, they were supposed to satisfy the revisional authority i.e. the appellant, about their entitlement to continue with the land beyond the ceiling limit prescribed under the Ceiling Act.

7. One of the arguments of Shri Anandjiwala is that it is not the case of the prosecution that the bribe amount was demanded by the appellant even on the day of trap. The appellant had not even initiated the talk about the case or any understanding arrived at between him and the complainant as well as PW-Yusufbhai qua the amount of bribe. It is also

not the case of the prosecution that the appellant had accepted the bribe amount hand to hand. No anthracene powder marks were seen on the file of the appellant. None of the family members, especially the maidservant Noorjahan has been examined. In such a situation, that evidence of the complainant, PW-Yusufbhai and panch witness Dr.Anakhia ought not to have been accepted in toto. When the PW-Yusufbhai is claiming himself to be a social political worker, his say ought not to have been accepted as reliable piece of evidence while appreciating the say of the complainant Punjabhai Dahyabhai. Failure on the part of the prosecution to produce three decisions which were in favour of the complainant and his family, also makes the prosecution case doubtful. On the contrary, it emerges that earlier on two occasions, the family of the complainant was intimated about termination of the proceedings initiated under the Ceiling Act in favour of the family. No judgment out of the said three judgments is either produced or the prosecution has established that any such three proceedings

had been initiated in past. Statutorily, the appellant was authorised to initiate revisional proceedings against the decision arrived at by the Tribunal Mamlatdar and he was empowered to reverse the finding recorded in favour of the complainant. In such a situation, as the complainant was interested in favourable result any how he did not care to engage a lawyer but selected an illegal and immoral recourse to pressurise the appellant with the help of PW-Yusufbhai. This totality is sufficient for reversal of the finding recorded by the learned trial Judge.

8. In support of this submission, Shri Anandjiwala, learned counsel appearing for the appellant, has placed reliance on the following decisions :

1. AIR 1995 SC 2178
   M. K. Harshan v. State of Kerala.
2. AIR 1987 SC 2402
   G.V.Nanjundiah v.State,Delhi Administration

9. One alternative argument advanced by Shri Anandjiwala is that in the event of failure of the appeal so far as challenge qua the conviction is concerned, this Court at least should observe that the learned trial Judge has grossly erred in imposing such a severe punishment. The quantum of punishment in such case is not at all relevant. The conviction by itself or even shortest period of sentence would send the same strong message in the Society to deter other public servants indulging in such activities and criminal misconducts. There was no statutory obligation on the part of the learned trial Judge to impose punishment of particular period. No minimum punishment was prescribed under the Act (old Act). So the period of substantive sentence imposed by the learned trial Judge should be held to be a harsh and unwarranted period of sentence and therefore, the same should be reduced. Placing reliance on the ratio on the decision in the case of Rameshkumar Gupta v. State of M.P., reported in AIR 1995 SC 2121, it is argued by Shri Anandjiwala, learned counsel appearing for the

appellant, that the period of imprisonment undergone by the appellant should be treated as sufficient punishment or the quantum of substantive sentence should be reduced to one week or so, if need be, by enhancing some amount of fine. The Court in such or similar cases may not enhance the amount of fine because the Government employee on conviction loses everything, including the financial benefits that he or his family would get. The termination from Government service under an impeachment is a civic death and therefore, if the Court is not inclined to accept the appeal against the judgment and order of conviction, the substantive sentence should be reduced as less as possible.

10. Ms.Darshna S. Pandit, learned Additional Public Prosecutor, appearing on behalf of the respondent-State, has strongly resisted this submission made by Shri Anandjiwala on behalf of the appellant. She has taken this Court through the relevant part of evidence appreciated and believed by the learned trial Judge and certain false denials made by the

appellant in the statement recorded under Section 313 of the Code of Criminal Procedure, 1973. She has also placed reliance on the statement made by the appellant, whereby he has admitted that the muddamal diary seized and produced during the trial belongs to him, even though he has denied the handwriting of the relevant entry of the diary of the year 1982 at Ex.44. It is submitted that the prosecution has satisfactorily proved the case beyond reasonable doubt and the theory of planting of bribe amount in the teapoy when the appellant had got up and had gone inside another room and when his face was towards the kitchen, the complainant as well as PW-Yusufbhai planted the muddamal currency notes in the teapoy lying in the drawing room of the residential premises of the appellant. The conduct of the appellant is the conduct of a guilty person and, therefore only, he has developed the theory of planting of bribe amount. It is not necessary to make demand of bribe amount by using the words “give”. It may be by gesture or sign. In the present case, it is satisfactorily established that the bribe

amount is referred to as “Vastu” (thing) and the complainant when had taken out the amount, was asked to put the same by gesture in the teapoy. The prosecution witness Yusufbhai has been rightly believed by the learned trial Judge in this regard because he was a party in opening the shutter of the teapoy lying in the corner so that the complainant can put the muddamal currency notes in the teapoy, as pointed out by the appellant. This PW-Yusufbhai had thereafter shut the top of the teapoy and both of them had thereafter occupied their respective seat. During the course of cross-examination, it has come on record undisputedly that the panch Dr.Anakhia, PW-Yusufbhai and the complainant were served with a cup of tea on the date of trap i.e. 02nd September, 1984, which was Sunday. The appellant himself was acting as a judicial authority and was a public servant entrusted with quasi judicial functions being a Deputy Collector. The notice issued by him was under the Ceiling Act as he was empowered to issue such notice in exercise of revisional jurisdiction vested with him. It is clear from

the evidence that prior to 02nd September, 1984, he had met the complainant Punjabhai Patel as well as PW-Yusufbhai at Modasa Government Circuit House, as he was holding sitting for hearing of cases under the Ceiling Act in the Government Circuit House. So on 02nd September, 1984, except PW-Dr.Anakhia, the other two persons i.e. the complainant and PW-Yusufbhai were known to him and the complainant was also a person in the case pending before him. There was no need for him to welcome them in the residential premises and that too on Sunday and further at odd hours. It was not required for the Deputy Collector and revisional authority to serve tea to these three visitors or to continue talk for a long period for no reason. It is true that the appellant had neither initiated talk, nor had demanded bribe straight way verbally. Merely because PW-Yusufbhai by initiating the talk about the pending case, if had broken ice, only on that count, he cannot be branded as the trap witness. It is also true that the complainant was asked to initiate talk but it appears from the evidence

of the complainant and PW-Yusufbhai that the complainant had left, initially, everything on PW-Yusufbhai. The learned trial Judge has rightly observed that PW-Yusufbhai has not advised complainant directly or indirectly to resolve the dispute even by paying bribe if need be. He has been correctly appreciated as an honest and dedicated social worker; and he himself had no reason personally to implicate the appellant, a Class-I Officer exercising judicial and/or quasi judicial functions, in such a trap falsely, so the complainant can settle the score and get a favourable result. So the impeachment made against PW-Yusufbhai is baseless and, therefore, the evidence qua demand of amount of bribe and the say of PW-Yusufbhai has been rightly believed. This witness gets sufficient corroboration from Panch Dr.Anakhia, an independent witness. As per the settled legal position, the panch witness is not a trap witness and unless it is satisfactorily brought on record showing cogent reasons or circumstances that he was much interested in result of the case in finishing the trap successfully, the evidence

of panch witness should not be viewed as an evidence of a member of the raiding party, not being a trap witness. He had no reason to implicate the appellant falsely in such a serious crime. The defence side has attempted to bring the aspect of selection of panch under the shadow of doubt and it was argued that the raiding officer had not selected the panchas objectively and as some of the persons of the department of the panch witness Dr.Anakhia were under obligation of Anti-Corruption Department (ACB), being persons under inquiry pending before the ACB authorities, he was selected as panch witness. So any type of pressure can be brought on him but the learned trial Judge has taken care about this aspect and has assigned logical reasons while observing that the Panch Dr.Anakhia is an independent witness and there is no element of losing of objectivity in selecting him as panch. After all he was a doctor serving in ESI scheme and he had attended the ACB office on instructions received from his superior. It is not in evidence of Dr.Anakhia that he had inquired as

to why he has been selected by the Department. If the intention of the ACB department was to bring pressure on any employee working in the ESI scheme, he ought not to have selected Dr.Anakhia to be the panch because the doctors are basically professionals. So on the contrary, the learned trial Judge was supposed to consider the evidence of this witness in its true perspective. When PW-Yusufbhai as well as Panch Dr.Anakhia, both are corroborating each other on material aspects as to the demand of amount of bribe by doing gestures and by using a mechanical word “vastu” (thing), there was no reason for the learned trial Judge to say that the prosecution has not proved the demand of bribe amount on the date of incident. It is not necessary to accept the amount hand to hand. The appellant may adopt any mode and each raiding party officer or complainant or panch may not even anticipate as to what mode the accused will adopt while making demand and accepting the amount. The evidence as to the demand made by the appellant on 02nd September, 1984 was required to be appreciated in the

background of the earlier conversation that had taken place between PW-Yusufbhai and the appellant when he had paid visit with the complainant and the other family members to Modasa Government Guest House. So the initial demand is proved by PW-Yusufbhai. The learned trial Judge has responded to the arguments in a legal as well as logical way as to why the complainant must have been asked to go out of the room and the appellant had initiated the talk with PW-Yusufbhai and why PW-Yusufbhai must have been selected as a fit person for putting the demand of bribe amount. There are no material inconsistencies qua the initial demand made by the appellant. So according to Ms.D.S. Pandit, no error has been committed by the learned trial Judge in holding that the prosecution has satisfactorily proved the demand aspect and ultimately the understanding is arrived at between the bribe giver and the appellant through middle man i.e. PW-Yusufbhai. The recovery of the amount from the teapoy speaks about the willful acceptance of the bribe amount. Of course, there is conflict about diary wherein the writing Ex.44 is made

as to whether it was lying near the place where the appellant was sitting or the appellant had gone inside the room to fetch the same, if the evidence of the complainant and PW-Yusufbhai is read simultaneously. But there is no inconsistency in the evidence of Panch Dr.Anakhia and PW-Yusufbhai. The appellant himself has admitted that the diary wherein the writing Ex.44 is made belongs to him while replying the question posed by the Court at the time of recording statement under Section 313 of the Code of Criminal Procedure, 1973, and the opinion of the handwriting expert is positive qua the writing Ex.44. When the appellant himself has admitted that the diary belongs to him, the Court can see and peruse the diary. It also contains programmes of the year 1984 including the tour and sitting programmes of the appellant. So merely because the small diary is of the year 1982, would not make the diary either irrelevant or a doubtful document. How a third person can write in the diary of the appellant. It is possible to forge a document after seizure of the diary. There is some

confusion as to the exact date and time of the seizure of this document. But when the evidence of PW-Yusufbhai and Panch Dr.Anakhia is consistent that the appellant himself had written the names of the parties and other details and they were able to see as to how the appellant writes and his pen moves, some confusion as to the exact time of the seizure of the document i.e. diary, would not be a matter of much importance, especially when the opinion of the handwriting expert qua the writing which is there in the diary Ex.44 is found to be the handwritings of the appellant. It is true that the handwriting science is not a perfect science but after all it is a science and the document is examined by a person having some experience in examining question documents with specimen writing or admitted/undisputed writing. The appellant even has dared to deny his own handwritings which were recovered by the Investigating Agency and has attempted to say that these handwritings may be of his Sheristedar. This writing is at Ex.35. The learned trial Judge has correctly appreciated the evidence of PW-7

Narendra Rathod Ex.61. A person who has served with the appellant if claims that he is capable of identifying the handwriting of his superior or colleague, his say can be accepted as reliable. In the cross-examination this witness has said that he had even seen the appellant writing judgments when he used to go into the chamber of the appellant on some occasions. He had also been to the chamber of the appellant when the appellant used to dictate the judgments. It is claimed by this witness that the appellant was giving judgments in his own handwritings and he had seen the depositions recorded by the appellant and also seen recording of such depositions by the appellant. This document Ex.35 i.e. undisputed writing of the appellant was compared with the disputed writing Ex.44 by the experts and the opinion is positive. So it is argued that when this opinion evidence also corroborates with the say of Panch Dr.Anakhia and PW-Yusufbhai as well as complainant, this conduct of the appellant becomes relevant and most important and it goes against the appellant. There was no reason to write the

name of the parties in the diary and there was no reason to call the parties at his residence on Sunday and that too at odd hours. Whether the appellant was interested in giving an opportunity to plant some amount so that an inimical litigant can implicate him in such a serious case, is the question posed by the learned trial Judge and the same has been replied by discussing the evidence in detail. It is true that there is no detailed description with map of the quarter where the appellant was residing on the third floor. Whether the door of the quarter was opened or it was knocked, at the time of entry in the house by the complainant, Panch Dr.Anakhia and PW-Yusufbhai ? Whether the appellant had come out from the room or he was sitting there in the drawing room, are the points which were brought to the notice of the learned trial Judge, when there are discrepancies in the evidence of the complainant as well as other two witnesses, but they are not material in nature. The prosecution witnesses are not required to narrate the incident in a parrot-like manner and as per the settled legal

position, the Court should not give importance to minor discrepancies. The prosecution is supposed to establish the case on the strength of the basic facts placed and if it is possible for the Court to say that the witnesses have successfully unfolded the basic story by leading legal evidence, the appellant can be linked with the crime. The recovery of the muddamal currency notes from the teapoy of the appellant, is not a case of the mere recovery of mudddamal amount. The amount was put there in the teapoy at the instance of the appellant. So it is as good as acceptance and such acceptance reveals the hidden demand, and the case of the prosecution should be appreciated in that perspective.

11. When the evidence of Panch Dr.Prataprai Anakhia is also corroborated by the panchnama Exs.28 and 29, his evidence should not be discarded merely because he, in the capacity of representative of Doctors' Union serving with the ESI, had made a representation against some superior officers and as the ACB department was investigating about the

allegations made against the superior officers because if such an argument is accepted, this Court shall have to reach to a finding that it was a 'give' and 'take' understanding between the raiding officer and Dr.Anakhia. On one hand, Dr.Anakhia would support the case of the prosecution in implementing the case of the present appellant and on the other hand, the raiding officer would record the finding in an ACB inquiry, as per the wish of the Union. There was no inimical term between the said Dr.Anakhia and the appellant, and there is nothing on record to show that after the successful raid, the ACB inquiry initiated against some senior officers of the ESI Scheme had resulted into favour of some doctors who had made allegations against their superiors. It was not impossible to bring these facts on record because the evidence has been recorded after some years from the date of trap. According to Ms.D.S. Pandit, learned Additional Public Prosecutor, the submission in this regard made by Shri Anandjiwala should not be accepted because the raiding officer is supposed to select a person of the repute as

panch and, therefore only, the person serving in Government department is selected. When a panch is neither named in the letter of requisition nor his post nor his position is stated, such a selection should not be viewed with doubt because the ACB department may have some cases under investigation practically in each Government department. The prosecution is supposed to establish about the following four major discrepancies :

(i) That the accused is a public servant and working in the capacity of a public servant and he had demanded the bribe/illegal gratification.

(ii) There is understanding or agreement by the accused to accept the bribe or illegal gratification.

(iii) Demand made soon or prior to acceptance.

(iv) Acceptance.

12. In the present case, the prosecution has

established the aforesaid aspects in a satisfactory manner and, therefore, the appeal against the judgment and order of conviction and sentence should be dismissed. While replying the arguments advanced by Shri Anandjiwala on the point of quantum of punishment, it is submitted by Ms.D.S. Pandit, learned Additional Public Prosecutor, that the Court simply should dismiss the appeal. The appellant was posted to deal with judicial and quasi judicial proceedings of the Revenue Department. The fate of the poor farmers was in the hands of the appellant and indirectly, the order passed way back in the month of February, 1978 was taken under Revision for no good reason by the appellant. Again the very finding was scrutinized by the competent officer in the month of January, 1984. The family of the complainant was intimated about their success. These two different orders, one passed in the year 1978 and another passed in the year 1984, had satisfied themselves about justification of holding one Khata of agricultural land of village Jalodar. So when it appears that the revisional proceedings

were initiated only with a view to extort money and when it is in evidence that the appellant had suggested the complainant side not to engage any advocate because ultimately he is to write the judgment and he would settle the matter if he is paid the bribe amount of Rs.6000/-, such an officer should not be given advantage of any lighter punishment. The time spent in hearing of the appeal would not help the appellant in such a case. So the appeal should be dismissed.

13. I have considered the rival contentions placed before me in detail and the oral as well as documentary evidence pointed out by Shri Anandjiwala, learned counsel appearing for the appellant as well as Ms.D.S. Pandit, learned Additional Public Prosecutor appearing on behalf of the respondent-State. The judgment and order under challenge is a reasoned order and the learned trial Judge has not only considered the oral version of the complainant but the evidence of the complainant has been cross-checked by two different witnesses namely PW-Yusufbhai and Panch Dr.Anakhia. The

facts are required to be scrutinized closely because the complainant as well as the raiding party police officers and Investigating Officers can be said to be the persons interested in the result of the case. Here in the present case, one more witness i.e. PW-Yusufbhai N. Malek being a social worker was also available to the learned trial Court for appreciating and evaluating the strength of the case of the prosecution placed by the complainant. Of course, PW-Yusufbhai had remained present all through out and was also present when the complaint was being recorded by the officer at ACB Police Station, Shahibaug at Ahmedabad. But there are convincing reasons for not branding him as a trap witness. The panch Dr.Anakhia is a qualified doctor in a Government service and has never acted as a panch any time before. His service as a panch is requisited after the complaint and he had volunteered to give service. The learned trial Judge has observed after narrating the details of the evidence stated by him that he has stood to the test of cross-examination and his evidence is required

to be read as a whole and also in view of totality emerging from record, evidence of the complainant as well as PW-3 Yusufbhai. The documentary evidence like panchnama drawn in his presence and at his instance i.e. both parts of panchnama are proved by this witness and the contents of the panchnama corroborates the oral version of this witness. In the same way, when the appellant himself has admitted that a diary containing writing Ex.44 belongs to him, the opinion of the handwriting expert can be said to be a corroborative piece of evidence to the oral say of this witness and the arguments advanced by Ms.D.S. Pandit to accept the evidence of Panch Dr.Anakhia as reliable piece of evidence, is found with enough strength. The learned trial Judge has rightly observed in paragraph no.42 of the judgment and order under challenge that this witness has no axe to grind against the appellant and has nothing adverse to appellant and has no reason to speak in favour of the prosecution. When the panch witness is not a trap witness as per the settled legal position, only obligation on the trial Court

was that his evidence is scrutinised closely and according to him, the evidence has been scrutinized closely. This panch witness Dr.Anakhia has categorically stated in his deposition that he along with the complainant and PW-Yusufbhai had been to the residential quarter of the appellant after completing formalities of the first part of panchnama and they were welcomed by the appellant and all the three had occupied their respective seats in “Sofa”. The appellant was sitting on a 'divan' (bed type of sitting arrangement) in the opposite direction/side. Thereafter, they had a sufficient talk on various subjects and it was also asked by PW-Yusufbhai to the appellant, if Dr.Anakhia wants to become an agriculturist, what procedure he shall have to follow and during the discussion, they were served with a cup of tea.

14. The panch Dr.Anakhia as well as PW-Yusuf are consistent and corroborate the complainant that the talk as to the pending case against the family of the complainant was initiated by PW-Yusufbhai and not by the complainant. The

conduct of the complainant was not as per the instructions given by the Investigating Officer because the complainant was directed to initiate the talk. It is very likely that all these three visitors may have expected that the appellant would initiate the talk and for reasonable good period till the tea was served to them, no specific disclosure of the subject was made by the appellant. So if the complainant has set quiet expecting the appellant to initiate discussion, would not make the entire case of the prosecution unreliable. The prosecution is consistent on the point that the first initial demand was made before the PW-Yusufbhai when he had accompanied the complainant on a given date of hearing i.e. on 21st August, 1984. In the month of July, 1984, when the family of the complainant was served with the notice, they had not responded. The appellant could have decided the matter exparte, however, the second notice was served and on that day, the initial demand of Rs.6000/- was made. The contents of the diary of the appellant recovered by the Investigating Agency reveal

clearly that on 21st August, 1984, the appellant had visited the Modasa Guest House and some hearings were also fixed on that day as well as on 28th August, 1984. Of course, by that time the complainant had received the intimation to appear in the matter on 04th September, 1984, but was asked to pay the amount fixed i.e. Rs.5000/- on 02nd September, 1984. It is clear from the evidence that the visit of complainant, PW-Yusufbhai and the panch at the residence of the appellant on 02nd September, 1984, was not a surprise visit and the contents of the complaint clearly indicate that the complainant and PW-Yusufbhai were asked to bring the bribe amount on 02nd September, 1984 and the location of his residential premises also was given to them. Of course, the complaint cannot be read as a substantive piece of evidence and the same can be used for the purpose of corroboration and contradiction. When the say of the prosecution is consistent that the complainant and PW-Yusufbhai were asked to come between 11-00 a.m. and 01-00 p.m., and second part of panchnama was drawn during that period only

i.e. after 12 noon and before 14-00 hrs. and these aspects have been proved by more than one witness, it is possible to infer even for this Court that the contents of the complaint can be used as a corroborative piece of evidence that the complainant and PW-Yusufbhai were invited with the amount of bribe of Rs.5000/- on 02nd September, 1984. It is established specifically that the complainant was ready to conclude the matter by paying Rs.1500/- or so initially but when the appellant had not agreed to that situation, and had insisted for the higher amount, the conscious of the complainant had challenged him and without intervention of PW-Yusufbhai, he had decided individually to go to the office of the ACB. The said PW-Yusufbhai was not a party in instigating or asking the complainant. All such suggestions made by the defence have been ruled out by both these witnesses in a very natural way. There was no reason for PW-Yusufbhai, otherwise to create a cock and bull story against the appellant that he had asked for the amount of Rs.6000/- to decide the matter in favour of the family

of the complainant. While appreciating the say of the complainant as well as PW-Yusuf on the aspects narrated by them qua events occurred on 21st August, 1984 and 28th August, 1984, I have also considered the notice to show cause which was issued by the appellant as revisional authority. Having considered the relevant provisions and basic scheme and structure of the Ceiling Act and the reasons assigned in invoking suo motu revisional jurisdiction, it is possible to infer that as such there was no scope for initiating such proceedings. Undisputedly, the revisional jurisdiction was invoked suo motu in a case where the family of an agriculturist had satisfactorily established that the holding is not an excess holding at all, even then the case of the family of the complainant was scrutinized twice, once in the year 1978 and thereafter, in the month of January, 1984. It is in evidence that the family of the appellant had failed in filling in Form No.6 and, therefore, the competent revenue authority had directed the said family to fill in the Form and to provide the details because

the Khata was showing, apparently excess land to the legitimate permissible holding and on that count, the family of the complainant was imposed penalty of Rs.100/-. Meaning thereby, from the inception, the case of the family of the complainant was under scrutiny. If the family was actually holding the excess land, the learned tribunal would not have felt satisfied in imposing fine for filling in the form and could have declared the area of the excess land. There is nothing on record to show that the revisional jurisdiction against the order passed by the learned tribunal was taken under revision by the then Deputy Collector in the year 1978-79. A copy of the judgment is not on record but the family of the complainant was intimated about favourable result and a copy of the said intimation is on record. For the reasons best known to the revenue authorities again such proceedings were initiated which may be because of some policy decision taken by the Government, but in January, 1984, the family of the complainant had cleared that scrutiny. The Court has reason to believe that the Deputy

Collector must have copies of both these decisions because these decisions have been mentioned and referred to in the notice to show cause issued by the appellant in the month of July, 1984. It was possible for the appellant to produce the copies of these decisions to justify the issuance of notice to show cause for exercising suo motu revisional powers; otherwise after about 6 years from the date of the first order, whether it could have been exercised, was the question and it appears that the learned trial Judge, keeping all these legal aspects in mind, has appreciated the grievance which was brought before the ACB in the nature of complaint on 01st September, 1984. It is in evidence that the complainant and PW-Yusufbhai were asked to bring the amount on 28th August, 1984 but on that day, negotiations continued and the complainant had expressed his inability to pay the entire sum as it was not possible for him to arrange for money. It has come on record that the complainant had an intention to have some deliberations with the family members. By that time, his conscious challenged him and he

decided to file the complaint before the office of the ACB. His admission pointed out by Shri Anandjiwala referred to hereinabove, according to me, does not make him a condemnable person and it is not possible for this Court to say that the complainant was out to trap the appellant any how to bring the pressure on him as his attempt to get any favourable order was likely to fail. The suggestion made by the appellant for not engaging the advocate giving indication that he is the authority to write judgment, etc., is not a conduct of an honest officer exercising judicial and quasi judicial functions. There is enough strength in the arguments of Ms.D.S. Pandit, learned Additional Public Prosecutor, that the learned trial Judge has discussed all these aspects including his conduct of welcoming litigants and treating them as guests on Sunday between 12-00 noon and 01-00 p.m. The said PW-Yusufbhai was justified in initiating talk, otherwise PW-Yusufbhai as well as complainant would have carved out a very sorry figure for them in the mind of trapping officer as well

as Dr.Anakhia; and ultimately, Dr.Anakhia must have realised that the grievance of the complainant is justified and the officer sitting before him is a corrupt officer. The technique adopted by him of accepting bribe amount cannot be ignored. In such or similar cases, the Court should not expect that the appellant should accept the amount of bribe or illegal gratification hand to hand. Considering the totality of evidence of panch Dr.Anakhia as well as PW-Yusufbhai, it is specifically proved that the amount was put in teapoy at the instance of the appellant only. There was no reason for the appellant to note down the names of parties in his diary. I have carefully perused the muddamal diary while appreciating the arguments advanced by Shri Anandjiwala in reference to disputed handwritings Ex.44. There is enough strength in the say of the complainant that the appellant must have told the complainant and PW-Yusufbhai on 28th August, 1984 that on the next date i.e. on 29th August, 1984, he is to visit Bayad and, therefore, they should come within two to three days and they may come on

02nd September, 1984 between 11-00 a.m. and 01-00 p.m. along with bribe amount.

15. The learned trial Judge has rightly appreciated the evidence of the handwriting expert and used it while dealing with the oral version of Yusufbhai and Dr.Anakhia as well as PW-7 Narendrasinh Rathod, who has proved the undisputed writing Ex.35. It is not possible to accept the say of Shri Anandjiwala that the prosecution ought to have produced the original judgments instead of mere intimations Exs.17 and 18 of the years 1978 and 1984. The notice Ex.22 dated 22nd August, 1984 has been correctly appreciated by the learned trial Judge, whereby the complainant was asked to appear for hearing on 04th September, 1984 though they were verbally asked to come down on 28th August, 1984. According to me, each move of the appellant poses him to be a corrupt officer because it has not come on record that the story of the version placed by the prosecution in reference to the events occurred on 28th August, 1984 is a hoax and even there was no sitting of the officer in

the concerned Guest House, nor he had fixed any hearing at Bayad on the next date i.e. on 29th August, 1984. On the contrary, the contents of the diary wherein disputed writing Ex.44 is written reveals that on 28th August, 1984, the appellant must have fixed the sitting in the Guest House, otherwise it was possible for him to bring the negative evidence in this regard. Non-examination of Noorjahan-maidservant or any of the family members of the appellant, would not make the case of the prosecution weak or doubtful; nor the theory of planting of money is found convincing. Before raiding party officer entered, the cup, saucers, etc. were taken away by the maidservant. So the Court has no reason to view the evidence of the complainant, panch Dr.Anakhia as well as PW-Dr.Yusufbhai as doubtful, whereby they have said that firstly they were served with a cup of tea and thereafter, the complainant was asked to put the bribe amount in the teapoy. It is not in evidence that when the complainant was putting the amount in the teapoy or PW-Yusufbhai was opening the upper

flap of the teapoy, any of the family member had entered into that room. The act of denying the handwriting at Ex.35 by the appellant, in response to the question put up by the learned trial Judge while recording statement under Section 313 of the Code of Criminal Procedure, 1973, is surprising. When the handwriting expert has opined that the writer of Ex.35 and disputed writing Ex.44 is the same, the question would be that how the handwriting of a Bench Clerk of the appellant could enter the diary maintained by the appellant. This explanation is found false. The Court is aware that the prosecution has to establish its case beyond reasonable doubt and it cannot rely on the weakness of the defenceside but it is also settled that false explanation or unsatisfactory explanation by the appellant if it is useful to the prosecution in adding strength to its case, the same can be used and the Courts are supposed to consider the stand taken by the appellant while developing or placing the defence. When the appellant himself has accepted that exercise of drawing of second part of panchnama, etc. was

completed in his residential premises only, is the case of the prosecution and what he has to say about it. In response to this question, the appellant has accepted that the police as well as the panchas were preparing some writing but he does not know the contents of the writing. The second part of panchnama in ACB trap cases is crucial piece of documentary evidence on which the prosecution can place heavy reliance and in light of the above answer given by the appellant, the Court has no reason to disbelieve the say of the prosecution that the second part of panchnama was drawn in presence of panchas and that too at the residence of the appellant and the necessary documents including seizure memo were prepared. It is in the document that the diary was simultaneously seized at the time when the other muddamal was seized. There is no controversy as to the description given in the second part of panchnama qua the small pocket diary. It was of the year 1982 publication and given by one limited company namely Grindwell Norton Ltd. and the disputed writing was found on a particular page for the

month of January 13 and 14. The manner in which the disputed writing was written is also described in the second part of panchnama and it is also mentioned in the panchnama that in the diary names of the father of the complainant and uncle have been written along with addresses (i.e. name of village Jalodar). Therefore, it is not possible for this Court to observe anything against the prosecution that the contents of disputed writing Ex.44 or the genuineness of the seizure of the diary should be viewed with doubt and it may be a case of forgery or the handwritings of the appellant could have been obtained under any pressure or threat in the diary. Ultimately, the appellant was a responsible officer; why he should succumb to such a pressure and provide any evidence against him by putting the name of a litigant before him in the diary. The indication of name of village Jalodar in the disputed handwriting specifically corroborates that the names were written only with a view to see that on 04th September, 1984, he can simply pronounce a short order. Considering the legality involved

in the matter, a short cryptic order of withdrawal of notice with two to three paragraphs could have served the purpose, is the impression created in the mind of the Court. It would not be proper for the Court to make any comment on surmises or conjectures but it is the experience of the society and especially, the person in the field of law and justice delivery system that sometimes, the quasi judicial authorities or administrative authorities empowered to act as judicial authorities have developed practice to issue worthless notices, so that after pocketing the bribe amount or by accepting illegal gratification, either in cash or kind, they can decide the case in favour of the concerned party. It is very likely that in the present case, the notice to show cause probably was issued so that the appellant can settle the matter as per his wish and desire and, therefore only, the say of Shri Anandjiwala has not been found acceptable that as the complainant was not interested in the result favourable to him as per his wish and when he realised that he would not succeed, he decided

to implicate the appellant falsely in such a serious case.

16. Some inconsistencies as to the words used by the appellant while making demand soon prior to the acceptance, is not found fatal because in this regard the evidence of panch as well as Yusufbhai is found more reliable and one of these witnesses has corroborated him that there was no demand qua document and money was impliedly described by the appellant as “Vastu” (thing), and there was no need for the appellant to use word “Lavo” (give). I have considered the relevant part of the evidence of PW-3-Yufufbhai under which it can be inferred that he has deliberately tried to keep curtain on the aspect as to whether the appellant had gone inside the room. For the sake of argument if it is accepted that once the appellant had gone either inside the room or towards the kitchen, then whether it was done simultaneously, when the amount was being put in the teapoy or immediately prior thereto, also would be a question. It is rightly described that everything happened

simultaneously but the act of putting the amount in the teapoy by the complainant was at the instance of the appellant, is the consistent evidence available on record. Prior to putting the amount in the teapoy, the complainant must have taken out the amount from the portfolio/pouch and Yusufbhai and complainant must have got up from the 'Sofa', so that they can put the muddamal currency notes inside the teapoy. So the opportunity to watch the entire incident was maximum to panch Dr.Anakhia and the evidence of Dr.Anakhia stood the test of cross-examination, is the finding recorded by the learned trial Judge and this Court has no ground to say that the said appreciation is either bad, illegal or perverse. False or unsatisfactory explanation is a circumstance which can be used against the appellant is a satisfaction, then use of such things by the learned trial Judge in arriving at a finding, cannot be said to be either bad or illegal.

17. Initially the complainant was asked to pay the amount on the very next day i.e. on 29th

August, 1984, but when inability to collect the amount of Rs.5000/- within that period was shown, they were asked to come on 02nd September, 1984. Meanwhile, the notice Ex.22 was already received fixing the adjournment on 04th September, 1984, and the complainant and Yusufbhai were aware that actual the date of hearing was fixed on 04th September, 1984. Therefore, the complainant was reasonable in rushing to the office of the ACB on 01st September, 1984.

18. As per the settled legal position while dealing with the appeal under Section 374 read with Section 386 of the Code of Criminal Procedure, 1973, this Court is supposed to give reasons for either accepting or not accepting the appeal preferred against the judgment and order of conviction and sentence and if need be, this Court can re-write the judgment and appreciate the evidence de-novo and can reach to its own conclusion while confirming or reversing the finding but when the Court is satisfied with the reasons assigned by the learned trial Judge, it is not

necessary to reproduce all the justifiable reasons recorded in support of the finding of conviction and sentence and this Court can adopt the reasons. In paragraph no.35 of the judgment and order under challenge, the learned trial Judge has elaborately discussed, keeping the settled legal position in mind, about the opinion evidence in the background of the disputed writing Ex.44 and other specimen and undisputed writing i.e. Exs.32 to 38, Ex.44 and Ex.45. The Court has also considered the reasons assigned by the expert Ex.47. In the same way, in paragraph no.36, the learned trial Judge has given cogent reasons to accept the version of PW-Yusufbhai certifying him to be a genuine and honest social worker, who attempted to stand by the complainant. When he is known public social worker and had also contested the election of panchayat, the complainant was justified in seeking his help in the precarious situation created by the appellant after a lapse of 6 years of his initial success in the year 1978. The learned trial Judge in paragraph nos.36 to 40 has considered certain decisions that has

reached to a reasonable correct finding that there is no reason for this Court to discard the evidence of panch Dr.Anakhia. The learned trial Judge has rightly narrated the observations made by the Apex Court in the case of ***Narottam Singh v. State of Punjab and others, reported in AIR 1978 SC 1542***, in paragraph no.43 of the judgment, I would like to reproduce the relevant part from the judgment and order under challenge of the learned trial Court, which is as under :

> “Discrepancies do not necessarily demolish testimony; delay does not necessarily spell inveracity and tortured technicalities do not necessarily upset conviction when the Court has had a perspicuous, sensitive and correctly oriented view of the evidence and probabilities to reach the conclusion it did. Proof of guilt is sustained despite little infirmities, tossing peccadilloes and peripheral provative shortfalls. The 'sacred cows'

or shadowy doubts and marginal mistakes process or other, cannot deter the Court from punishing crime where it has been sensibly and substantially brought Home."

19. In the same way, the learned trial Judge has also rightly observed that the observations made by the Apex Court in the case of ***State of Rajasthan v. Smt. Kalki*** and others, reported in AIR 1981 SC 1390, also would help the prosecution, whereby the Apex Court has held that :

"In the depositions of witnesses there are always normal discrepancies however honest and truthful they may be. These discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental deposition such as shock and horror at the time of the occurrence, and the like Material discrepancies are those which are not normal, and not expected

of normal person”.

20. The decision cited by Shri Anandjiwala, learned counsel appearing for the appellant, in the case of M.K. Harshan (supra) would not help the appellant in the present case because the facts of the cited case are materially different. In the cited decision, the observations of the Apex Court are in reference to the evidence available in the cited decision. The Apex Court was considering the aspect of a case where it felt satisfied that there is no corroborative evidence that the amount was kept in the drawer at the instance of the accused and the Apex Court had found that the evidence on this count suffers from infirmities. In this cited decision, the recovery of the tainted money was from the drawer of the accused and the trap witness had deposed that the appellant did not touch the currency notes but told him to keep the same in his drawer. The defence of the accused was that the amount was planted in his drawer without his knowledge. On facts, the Apex Court had found that the defence of the

appellant is probable. On the other hand, in the present case, two witnesses who can be said to be independent persons, have supported the case of the complainant, and there is no theory of planting of amount in the teapoy with ulterior motive.

21. In the case of N.V. Nandunjah (supra), the Apex Court acquitted the accused reversing the decision of the Delhi High Court because it was satisfied that the factum of acceptance of bribe is not properly established. The allegation of the prosecution was that the accused engineer had accepted the bribe from Contractor working under him. The testimony of the Contractor was not found trustworthy and the service record of the engineer was otherwise found honest and there was no allegation as to his integrity in past. He was not even owning any immovable or movable property. So the facts of the present case are materially different than that of the cited decision.

22. In the case of Rameshkumar Gupta (supra), the

defence of planting of the muddamal currency notes was taken and the currency notes were found lying under the mattress but it was established that at least once the muddamal currency notes must have been handled by the accused at stage and, therefore, the bare denial that he had no knowledge whatsoever was not found acceptable. Here in the present case, the learned trial Judge has satisfactorily recorded that there is no substance in the theory of planting and the amount was kept in the teapoy by the complainant with the help of PW-Yusufbhai at the instance of the appellant and that too, after demand soon prior to the act of putting the same in the teapoy.

23. The evidence of the complainant, of course, is not exactly same so far as the conversation immediately prior to acceptance of the bribe amount and keeping the same in the teapoy at the instance of the appellant is concerned. But the Court is supposed to look to the totality of the evidence and should try to seek corroboration qua the substantive story

of the prosecution and the version of the complainant. It is settled that the corroboration need not be direct. It can be of circumstantial evidence also. Here the say of the complainant gets corroboration directly from two witnesses as discussed earlier and also from the circumstantial evidence i.e. conduct of the appellant himself by fixing a particular day for hearing and calling the complainant with the amount of bribe at his residence on Sunday prior to the date fixed for hearing of the case. So this is a case here a presumption can be drawn against the appellant. When a demand and acceptance is found established, a presumption can be raised under Section 4(1) of the Act (Old) and the onus shifted on the shoulder of the appellant needs rebuttal. In the present case, the appellant has failed in rebutting the presumption and this crucial aspect cannot be ignored by the Court.

24. For short, the learned trial Judge has also dealt with the discrepancy aspect in a logical and reasonable manner. So when this Court is

in agreement with the finding recorded by the learned trial Judge, it is not necessary for this Court to go into further detailed discussion of the evidence led by the other witnesses including the raiding officer, and it is possible to conclude saying that there is no merit in the appeal so far as the finding of conviction arrived at by the learned trial Judge is concerned. So the appeal against the judgment and order of conviction is required to be rejected.

25. On the point of quantum of punishment, the decision cited by Shri Anandjiwala, learned counsel appearing for the appellant, can help the appellant some extent. But there is enough strength in the arguments of Ms.D.S. Pandit, learned Additional Public Prosecutor, that the officer in the present case was to exercise judicial powers. The revisional proceedings were initiated suo motu by the appellant only and he intended to hurriedly conclude the matter on receipt of the amount as illegal gratification. In the cited decision, it appears that the accused had remained in jail

for more than two weeks. As the case was before the Apex Court, he must have appeared before the jail authority and started serving the sentence and, thereafter he could have been granted bail. Of course, in the present case, the incident is old by more than 22 years and if the date of conviction and sentence is considered, then also the judgment and order is of the year 1990. So for about 5 to 6 years, the appellant had remained under the hanging sword of pending trial and the present appeal is being decided by way of present judgment in the year 2007, meaning thereby, after about 16 years. So the Court even after observing that the learned trial Judge was justified in imposing the punishment to the appellant, can still reduce the sentence keeping the totality of facts and circumstances of the case in mind and by enhancing the amount of fine because it is rightly argued that any quantum of punishment and substantive sentence would have the same deterrent effect. The appellant is the loser of every benefit as a Government employee and his family also would not get any advantage of

any benevolence scheme available to the family member of the retired Government employee and stigmatic termination from the Government services is practically civic death. So the substantive sentence qua the offence punishable under Section 161 of the Indian Penal Code is concerned, if reduced to one month by enhancing the amount of fine to the tune of Rs.5000/-, would serve the purpose, instead of Rs.1500/- and in the same way, instead of substantive sentence of rigorous imprisonment for six months and a fine of Rs.1500/-, if altered to rigorous imprisonment for one month with fine of Rs.5000/-, would serve the purpose in the totality of facts and circumstances of the case that has taken shape during all through out this period. The Court is aware that the pendency of a litigation for long cannot be taken as a matter of advantage by either party mainly by the appellant-convict. Normally, such approach is being taken by each Courts including the Apex Court where the minimum punishment is prescribed under the statute. Under the old Act, no such minimum punishment was prescribed and,

therefore, the substantive sentence can be reduced keeping in mind all relevant aspects. So it is possible to allow the appeal partly on the point of quantum of punishment and, therefore, the appeal is required to be partly allowed on this point.

26. In view of above observations and discussion, the present appeal against the judgment and order of conviction dated 10th August, 1990, passed by the learned Special Judge, Sabarkantha at Himatnagar, in Sessions Case No.2 of 1987, is hereby dismissed; and the appeal against the judgment and order of sentence dated 10th August, 1990, passed by the learned Special Judge, Sabarkantha at Himatnagar, in Sessions Case No.2 of 1987, is hereby partly allowed. So far the offence punishable under Section 161 of the Indian Penal Code is concerned, the substantive sentence is reduced to rigorous imprisonment for one month and a fine of Rs.5000/-. As the appellant has already paid a fine of Rs.1500/- qua this offence, he is directed to pay the remaining amount of Rs.3500/-, in default to

undergo simple imprisonment for one month. So far as the offence punishable under Section 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act (old Act) is concerned, the substantive sentence is reduced to rigorous imprisonment for one month and a fine of Rs.5000/-. As the appellant has already paid an amount of Rs.1500/- qua this offence, he is ordered to pay the remaining amount of Rs.3500/-, in default to undergo simple imprisonment for one month. The substantive sentence shall run concurrently.

As the appellant is enjoying bail since 1990, he should be given some reasonable time to surrender and, therefore, the appellant is directed to surrender himself within a period of 10 (ten) weeks from today to serve the sentence, failing which the learned trial Court shall issue a non-bailable warrant against the appellant to secure the custody of the appellant so that he can be sent to jail for serving the sentence. The bail bond of the appellant shall stand cancelled.

(C.K. Buch, J)

Aakar